

REMARKS

In the above amendments, claim 13 is amended. Claims 25-27 are cancelled. New claims 28-30 are added. Claims 1-7 were cancelled in a previous amendment. .

The amendments and new claims are fully supported in the specification, so no new matter is added. Therefore, after entry of the above amendments, claims 8-24 and 28-30 are now pending for reconsideration. Applicants believe that the present application is now in condition for allowance, which prompt and favorable action is respectfully requested.

Summary of the Office Action

In the Office Action, claims 25-27 were rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claims 25-27 were also rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 12, 13, 25, and 26 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,421,527 to DeMartin *et al.* (DeMartin) in view of U.S. Patent No. 5,216,692 to Ling (“Ling”). Claims 8-11, 15-17, 20-21, and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,905,742 to Chennakeshu *et al.* (“Chennakeshu”) in view of U.S. Patent Application Publication No. 2003/0002518 to Shibutani (“Shibutani”) further in view of Ling. Claim 18 was rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0072395 to Jia *et al.* (“Jia”) in view of Chennakeshu further in view of Ling.

Additionally, the Examiner objects to claims 14, 19, 22, 24, and 27 as being dependent upon a rejected base claim, but indicates that these claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants wish to express their appreciation to the Examiner for indicating that claims 14, 19, 22, 24, and 27 would be allowable if rewritten in independent form. The rejections and

objections are respectfully traversed in light of the foregoing amendments and the following remarks.

Response to rejection of claims 25-27 under 35 U.S.C. § 101

The Examiner rejected claims 25-27 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. In particular, the Examiner stated that claims 25-27 failed to comply with the 101 interim guidelines. Applicants have canceled claims 25-27 in favor of new claims 28-30. Applicants submit that new claims 28-30 comply with the 101 interim guidelines and therefore the rejection of claims 25-27 under 35 U.S.C. § 101 are moot.

Response to rejection of claims 25-27 under 35 U.S.C. § 112, second paragraph

The Examiner rejected claims 25-27 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the Examiner asserts that “[a] computer readable medium comprising: code for . . .” is vague and indefinite because it is unclear how a medium can comprise instructions. As stated above, Applicants have canceled claims 25-27 in favor of new claims 28-30 which comply with the Examiner’s suggestion that the claim language would not be vague if it recited “stored on” or “recorded on.” Accordingly, the rejection of claims 25-27 under 35 U.S.C. § 112, second paragraph are moot., and Applicants respectfully submit that new claims 28-30 are definite.

Response to Rejections of Claims 12, 13, 25, and 26

To establish a *prima facie* case of obviousness, the prior art references “must teach or suggest all the claim limitations.” M.P.E.P. § 2142. Applicants respectfully submit that claims 12 and 13 are patentably distinct from the cited references because neither DeMartin nor Ling, taken alone or in combination, teach or suggest all of the limitations recited in these claims.

In particular, claim 12 recites, *inter alia*, “receive circuitry operative to receive signals on a reverse link, including a quality message with a parity check, and differential indicators, the quality message periodically providing a quality metric of a forward link, wherein the differential indicators track the quality metric between successive quality messages.” Neither DeMartin nor Ling, taken alone or in combination, teach or suggest this element.

The Examiner correctly states that DeMartin fails to “positively disclose that the quality message periodically providing a quality metric of a forward link, wherein the differential indicators track the quality metric between successive quality messages.” Office Action, dated December 15, 2008, page 5. In order to cure the deficiency of DeMartin, the Examiner cites Ling. Specifically, the Examiner asserts that Ling teaches an “indicator [that] is set based on difference signal.” *Id.* at 6. Applicants disagree with the Examiner’s assertion that Ling cures the deficiency of DeMartin.

In contrast to claim 12, Ling fails to teach or suggest “receive circuitry operative to receive . . . differential indicators” as recited in claim 12. Rather, Ling discloses receive circuitry to receive a signal from a mobile station. Based on the received signal, the base station 100 receiver estimates the received signal power transmitted by the mobile station 102 of a particular user. Ling discloses that the received signal power estimate is compared to a threshold to determine a value at which to set the power control indicator. The power control indicator is then transmitted to the mobile device. The mobile device then increases or decreases its transmission power based upon the received power control indicator. *See* Ling, col. 5, lines 40-68. Thus, in contrast to claim 12, Ling does not receive a *quality* metric. Moreover, Ling does not receive a differential indicator. Ling merely receives a communication signal from the

mobile station and, to the extent there is a quality metric generated, it is generated internally (i.e., not received) by estimating the received signal power.

In order to generate the power control indicator, Ling does disclose a difference signal. However, the difference signal is never transmitted, and thus, is not received by the base station nor is it received by the mobile station. Rather, the difference signal is internally generated by the base station to update (modify) the power control threshold. *See* Ling, col. 7, lines 2-15.

Thus, neither DeMartin nor Ling, taken alone or in combination, teach or suggest “receive circuitry operative to receive signals on a reverse link, including a quality message with a parity check, and differential indicators, the quality message periodically providing a quality metric of a forward link, wherein the differential indicators track the quality metric between successive quality messages.” Accordingly, Applicants respectfully request withdrawal of the rejection of claim 12 under 35 U.S.C. § 103(a).

Claim 13 is amended to make it clear that quality messages and differential indicators are generated and transmitted. As stated above with respect to claim 12, neither DeMartin nor Ling, taken alone or in combination, teach or suggest transmitting or receiving quality messages and/or differential indicators. As correctly stated by the Examiner, DeMartin fails to teach or suggest “the quality message periodically providing a quality metric of a forward link, wherein the differential indicators track the quality metric between successive quality messages.” Office Action, dated December 15, 2008, page 5. In addition, as discussed above with respect to claim 12, Ling fails to teach or suggest transmitting or receiving quality messages and/or differential indicators. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 13 under 35 U.S.C. § 103(a).

With respect to the rejections of claims 25 and 26, those claims have been cancelled in favor of new claims 28 and 29. New claims 28 and 29 recite similar limitations as canceled claims 25 and 26 but in slightly different format to address the Examiner's rejections under 35 U.S.C. §§ 101 and 112, second paragraph. Accordingly, Applicants address the rejection of claims 25 and 26 here as they may be applicable to new claims 28 and 29.

New claims 28 and 29, by way of its dependence upon claim 28, recite, *inter alia*, "transmitting quality messages at the transmission rate; and transmitting differential indictors independently of quality messages." Thus, for at least the same reasons discussed above with respect to claims 12 and 13, Applicants submit that neither DeMartin, nor Ling, taken alone or in combination, teach or suggest all of the limitations recited in claims 28 and 29. Accordingly, Applicants respectfully submit that new claims 28 and 29 are patentable over either DeMartin or Ling, taken alone or in combination.

Response to Rejection of Claims 8-11, 15-17, 20, 21, and 23

Applicants respectfully submit that claims 8-11, 15-17, 20, 21, and 23 are patentably distinct from the cited references because none of Chennakeshu, Shibutani, nor Ling, taken alone or in combination, teach or suggest all of the limitations recited in these claims.

In particular, claims 8, 11, 15, and 16 each recite, *inter alia*, "transmitting quality messages at the transmission rate; and transmitting differential indictors independently of quality messages." The Examiner correctly states that both Chennakeshu and Shibutani "fails [sic] to positively disclose wherein transmitting differential indicators based on the comparison and transmitting differential indicators independently of quality messages." Office Action, dated December 15, 2008, page 9. In order to cure the deficiencies of both Chennakeshu and Shibutani, the Examiner cites Ling. However, as discussed above with respect to claims 12 and

13, Ling fails to teach or suggest transmitting or receiving quality messages and/or differential indicators. Consequently, Chennakeshu, Shibutani, and Ling, taken alone or in combination, fail to teach or suggest all of the limitations recited in each of claims 8, 11, 15, and 16. In addition, claims 23 and 17 depend from claims 11 and 16, respectively. Thus, by way of their dependence, claims 23 and 17 also recite, *inter alia*, “transmitting quality messages at the transmission rate; and transmitting differential indicators independently of quality messages.” Therefore, for at least the same reasons as discussed above, Applicants submit that Chennakeshu, Shibutani, and Ling, taken alone or in combination, fail to teach or suggest all of the limitations recited in claims 23 and 17. Accordingly, Applicants respectfully request withdrawal of the rejections of claims 8-11, 15-17, and 23 under 35 U.S.C. § 103(a).

Claim 20 and 21, by way of its dependence upon claim 20, recite, *inter alia*, “a controller configured to determine a transmission rate for transmission quality messages and differential indicators based on the comparison, the differential analyzer further configured to generate quality messages at the transmission rate, *the differential analyzer further configured to transmit differential indicators independently of quality messages.*” (emphasis added). For at least the same reasons discussed above with respect to claims 8-13, 15-17, and 23, Applicants respectfully submit that Chennakeshu, Shibutani, and Ling, taken alone or in combination, fail to teach or suggest all of the limitations recited in each of claims 20 and 21. Accordingly, Applicants respectfully request withdrawal of the rejection of claims 20 and 21 under 35 U.S.C. § 103(a).

Response to Rejection of Claim 18

Similar to claim 13, claim 18 is amended to make it clear that quality messages and differential indicators are generated and transmitted. As correctly stated by the Examiner, both Jia and Chennakeshu fail to “disclose wherein transmitting differential indicators based on the

comparison and transmitting differential indicators independently of quality messages.” Office Action, dated December 15, 2008, page 16. In order to cure the deficiencies of Jia and Chennakeshu, the Examiner cites Ling . As discussed above with respect to claims 8-13, 15-17, 20, 21, and 23, Ling fails to teach or suggest transmitting or receiving quality messages and/or differential indicators. Consequently, Jia, Chennakeshu, and Ling, taken alone or in combination, fail to teach or suggest all of the limitations recited in each of claim 18. Accordingly, Applicants respectfully request withdrawal of the rejection of claim 18 under 35 U.S.C. § 103(a).

New Claims

New claims 28-30 are fully supported by the specification. In particular, new claims 28-30 restate the subject matter of canceled claims 25-27 in an alternative “Beauregard claim” format. Support for the “tangible storage medium” subject matter is provided particularly in paragraph [0074] of the published application (U.S. Patent Publication 2003/0161285). Applicants respectfully submit that new claims 28-30 are allowable as they recite the subject matter that the Examiner indicated is allowable in claims 8-24.

CONCLUSION

In view of the foregoing, Applicants submit that all pending claims in the application are in condition for allowance. Accordingly, reconsideration and allowance of the present application are respectfully requested. Should any issues remain unresolved, the Examiner is encouraged to telephone the undersigned at the number provided below.

Applicants hereby petition for a two (2) month Extension of Time under 37 CFR § 1.136(a) to extend the period of response from March 15, 2009 to May 15, 2009. The appropriate fees under 37 CFR § 1.17 are submitted herewith.

If it is determined that additional fees are due, the Commissioner is hereby authorized to charge payment of any fee(s) or any underpayment of fee(s) or credit any overpayment(s) to Deposit Account No. 17-0026. If necessary, Applicants request, under the provisions of 37 CFR 1.136(a) to extend the period for filing a reply in the above-identified application and to charge the fees for a large entity under 37 CFR 1.17(a).

Respectfully submitted,

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